

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

MICHAEL DUPREE, JR.,  
a Colorado Resident;  
MICHAEL DUPREE, SR.; and  
DARLENE DUPREE, his parents,  
Residents of the Country of Austria,

Case No. 10-CV-12094

Hon. Lawrence P. Zatkoff  
Hon. Mag. Mona K. Majzoub

Plaintiffs,

v.

CRANBROOK EDUCATIONAL  
COMMUNITY; JOHN J. WINTER;  
and CHARLES SHAW,

Defendants.

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**PLAINTIFFS' MOTION FOR LEAVE  
TO FILE A SUR-REPLY  
TO DEFENDANTS' REPLY BRIEF**

Plaintiffs, Michael Dupree, Jr., Michael Dupree, Sr., and Darlene Dupree, through their counsel Thomas, Garvey, Garvey, & Sciotti, hereby move for leave to file a sur-reply brief to the Reply Brief filed by Defendants, Cranbrook Educational Community, John J. Winter, and Charles Shaw, in support of their Motion for Summary Judgment.

Plaintiffs rely upon the following Brief in Support of their Motion.

In accordance with Eastern District of Michigan Local Rule 7.1(a), Plaintiffs sought, but did not receive, concurrence in this Motion.

Respectfully submitted,

THOMAS, GARVEY, GARVEY & SCIOTTI

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April 12, 2011

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**BRIEF IN SUPPORT OF PLAINTIFFS' MOTION  
FOR LEAVE TO FILE A SUR-REPLY TO DEFENDANTS' REPLY BRIEF**

**STATEMENT OF QUESTIONS PRESENTED**

Whether this Court should grant Plaintiffs leave to file a sur-reply brief to Defendants' Reply in Support of their Motion for Summary Judgment where this Court has discretion to control its docket and where doing so would best serves the interest of justice.

Plaintiffs Answer: Yes.

Defendants Answer: No.

This Court Should Answer: Yes.

**MOST CONTROLLING AUTHORITY**

*Kimble v. Hoso*, 439 F.3d 331 (6th Cir. 2006)

Plaintiffs, Michael Dupree, Jr., Michael Dupree, Sr., and Darlene Dupree, state as follows in support of their Motion for Leave to File a Sur-Reply Brief.

This case was originally assigned to Judge Robert H. Cleland. (Exhibit 1, Docket) On August 26, 2010, a scheduling conference was held before Judge Cleland, at which time it was agreed that Plaintiffs could file an Amended Complaint by way of stipulation and order.

On September 24, 2010, Plaintiffs filed an Amended Complaint (Exhibit 1, R. 12; Exhibit 2), and also filed the Stipulated Order allowing Plaintiffs to file the Amended Complaint. (Exhibit 1, R. 13; Exhibit 3) On September 27, 2010, the Court entered the following "Text-Only Order":

TEXT-ONLY ORDER STRIKING as improvidently filed Stipulation and order re: 13 Amended Complaint filed by John J Winter, Cranbrook Educational Community, Michael Sr. Dupree, Michael Dupree, Jr., Darlene Dupree, Charles Shaw. Signed by District Judge Robert H Cleland. (LWag) (Entered 09/27/2010)

(Exhibit 1)

About two weeks later, the case was reassigned from Judge Cleland to Judge Nancy G. Edmunds. (Exhibit 1, R. 14) That same day an Order of Disqualification was entered reassigning the case to this Court. (Exhibit 1, R. 15) On October 25, 2010, this Court issued a Scheduling Order, and on March 2, 2011, Defendants filed their Motion for Summary Judgment. (Exhibit 1, R. 17, R. 21) Plaintiffs timely filed their Response to Defendants' Motion for Summary Judgment on March 22, 2011 in which Plaintiffs then concurred with Defendants' dismissal of Plaintiffs' federal law claims. (Exhibit 1, R. 22) Defendants timely filed their Reply to Plaintiffs' Response on April 5, 2011. (Exhibit 1, R. 24)

Plaintiffs now seek leave to file a sur-reply brief to Defendants' Reply for the purpose of explaining to the Court the status of the Amended Complaint and the circumstances surrounding its apparent non-entry on the Court's Docket, despite having being filed and despite Defendants'

stipulation to allow Plaintiffs to file the Amended Complaint. Plaintiffs also seek to explain that they should not be sanctioned for ultimately concurring with Defendants regarding the dismissal of Plaintiffs federal law claims.

This Court has discretion over all pretrial matters. *See Kimble v. Hosoi*, 439 F.3d 331, 336 (6th Cir. 2006) (“[D]istrict courts ordinarily enjoy broad discretion in matters of pretrial management, scheduling, and docket control.”) Allowing Plaintiffs to file the attached sur-reply brief would provide this Court with the proper background of this case for a meaningful assessment of the matters before it.

### **CONCLUSION**

For the above-stated reasons, Plaintiffs respectfully request that this Court allow them leave to file a sur-reply brief, which is attached hereto as Exhibit 4.

Respectfully submitted,

THOMAS, GARVEY, GARVEY & SCIOTTI

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(P33501)

April 12, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that on April 12, 2011, I electronically filed the foregoing paper with the Clerk of the Court using the ECF System which will send notification to all ECF participants of record.

Respectfully submitted,

s/Christopher R. Sciotti

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